

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AUG 21 2000

PATRICK FISHER
Clerk

LARRY D. SIMMS,

Petitioner-Appellant,

v.

DAVID R. MCKUNE; ATTORNEY
GENERAL OF KANSAS,

Respondents-Appellees.

No. 00-3015
(D.C. No. 97-3027-DES)
(D. Kan.)

ORDER AND JUDGMENT *

Before **BRORBY, PORFILIO,** and **MURPHY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner Larry D. Simms, a prisoner of the State of Kansas appearing pro se, appeals from the denial of his petition for habeas relief filed under 28 U.S.C. § 2254, and applies for a certificate of appealability (COA) under 28 U.S.C. § 2253(c). “[A] COA may not issue unless ‘the applicant has made a substantial showing of the denial of a constitutional right.’” Slack v. McDaniel, 120 S. Ct. 1595, 1603 (2000) (quoting § 2253(c)).

Petitioner was convicted of kidnapping, aggravated robbery, and attempted aggravated robbery. His conviction was affirmed on direct appeal. In his habeas petition, petitioner claimed that the police conducted an unduly suggestive lineup, that the confinement of the victim was insufficient to constitute kidnapping, that the court constructively amended the complaint by its jury instructions, that he received ineffective assistance of counsel, and that the imposition of consecutive sentences violated his right to be free from double jeopardy.

The district court thoroughly reviewed each of petitioner’s claims. We have carefully reviewed petitioner’s brief on appeal, the district court’s December 23, 1999 decision, and the record on appeal. For substantially the same reasons as those set forth in the district court’s memorandum and order, we

deny petitioner's application for a certificate of appealability. The appeal is
DISMISSED.

Entered for the Court

John C. Porfilio
Circuit Judge